

04-109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMEREX GROUP, INC. and
AMEREX USA INC,

Plaintiffs,

- against -

LEXINGTON INSURANCE COMPANY AND
WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,

Defendants.

) CASE NUMBER:
) 07 CV 3259 (HB)
)

) **PLAINTIFFS' RESPONSE TO**
) **DEFENDANTS' STATEMENT**
) **OF UNDISPUTED MATERIAL**
) **FACTS**
)

Pursuant to Local Civil Rule 56.1 of the United States District Court of the Southern District of New York, Plaintiffs AMEREX GROUP, INC., and AMEREX USA INC (collectively, "Plaintiffs") hereby submit their response to Defendants' Statement of Undisputed Material Facts in support of their Motion for Partial Summary Judgment seeking to compel enforcement of eth appraisal clauses of the insurance policies at issue. Citations to lettered Exhibits refer to Exhibits to the Declaration of Janese Thompson. References to numbered Exhibits refer to Exhibits to Defendants' motion papers.

GENERAL OBJECTION

Plaintiffs deny those statements of Defendants Rule 56.1 Statement that have not referenced a supporting document and/or statements that are not factual in nature.

RESPONSES

1. Denied. Plaintiffs suit concerns claims for property, business income and extra expense. See Janese Thompson Declaration ("Thompson Decl.") at Ex. "A" at ¶¶'s 5, 26 and 33.

2. Agreed.

3. Agreed, to the extent that there is no admissible evidence regarding whether the Fireman's Fund Insurance Company ("Fireman's Fund") Policy annexed to Mark Antin Declaration ("Antin Decl.") at Ex. "1" is a true and correct copy of the Fireman's Fund Policy.

4. Agreed.

5. Agreed.

6. Agreed.

7. Agreed.

8. Denied. Fireman's Fund paid its entire policy limits of \$2,500,000.00 to the Plaintiffs. However, that amount was not for the entire claim. Thompson Decl. at Ex. "A", ¶

24.

9. Agreed.

10. Agreed.

11. Agreed.

12. Agreed.

13. Agreed.

14. Denied. The offer was not substantial and was not made in good faith. Thompson Decl. at ¶ 27.

15. Denied. The Plaintiffs commenced this suit after rejection of the offer was communicated to Defendants. Thompson Decl. at ¶ 27.

16. Agreed.

17. Agreed.

18. Agreed.

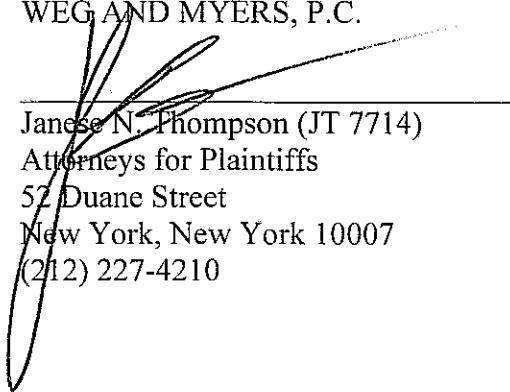
19. Agreed.

PLAINTIFFS OPPOSE THOSE STATEMENTS OF DEFENDANTS' RULE 56.1
STATEMENT THAT HAVE NOT REFERENCED A SUPPORTING DOCUMENT AND
THAT ARE NOT FACTUAL IN NATURE.

Dated: New York, New York
July 27, 2007

WEG AND MYERS, P.C.

By:



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